

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

MARIA MAGANA,

Plaintiff and Appellant,

v.

CHARLIE'S FOODS, INC.,

Defendant and Respondent.

G041153

(Super. Ct. No. 05CC13298)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Robert J. Moss, Judge. Affirmed.

Rastegar & Matern, Matthew J. Matern, Rania S. Habib, and Paul J. Weiner; and The Blanco Law Firm, Alejandro D. Blanco for Plaintiff and Appellant.
Edward L. Smilow, for Defendant and Respondent.

*

*

*

I. Background

This is the attorney fee sequel to *Magana v. Charlie's Foods, Inc.* (June 30, 2009, G039684) [nonpub. opn.] [2009 WL 1878712] (*Magana I*), in which this court affirmed an award of \$1,800 in economic damages and \$110,000 in pain and suffering for the plaintiff, Maria Magana, in a sexual harassment suit, but reversed a \$500,000 punitive damage award against defendant Charlie's Food as grossly disproportionate in light of the "skimpy" evidence of defendant Charlie's financial condition. (*Magana I, supra*, [WL 1878712 at p. 7.])¹ As we pointed out in that opinion, if "all we had in this record" was the plaintiff's evidence of the defendant's financial condition, "we would have to reverse and there would be no possibility of punitive damages on retrial." (*Magana I, supra* [2009 WL 1878712 at p. 8].) Magana's possibility of recovering *some* punitive damages, however, was saved by the fortuity of having had Charlie's own counsel ask questions during trial that established a net worth of \$600,000. (*Ibid.*)

After the initial judgment (September 2007), but before the issuance of *Magana I* (June 2009), Magana's counsel made a motion for an award of attorney fees (February 2008). Magana's counsel asked for \$1.5 million, based on the going rates of the seven attorneys who worked on the case,² for about 1,901.4 total hours of work,³ as adjusted by a multiplier of two.

The trial court awarded \$445,000, which, depending on how you "dice the math" (as Magana's counsel put it to the trial court), might be seen as every attorney on the case getting paid for every hour spent on the case, at the hourly rate of \$234 an hour.

¹ Charlie's has filed for bankruptcy. However, in October 2009, its counsel advised this court that the bankruptcy court had lifted the automatic stay for the limited purpose of resolving the present case.

² The seven attorneys, and their then respective hourly rates were: Matthew J. Matern (\$475); Alejandro D. Blanco (\$475); Paul J. Weiner (\$475); Rania S. Habib (\$315); Thomas S. Campbell (\$370); Candace Kwon (\$340); and Stacey R. Brown (\$250). The math yielded a "lodestar" (hours times rate) of \$698,457.75 for time up to the motion, and another \$116,616 for time spent on the motion through the reply. The total lodestar was \$815,015.75 (\$698,457.75 plus \$116,616). Magana's attorneys asked for a "multiplier" for the lodestar of two, which would yield a request of \$1.6 million (\$1,630,147.50 to be exact), but Magana's reply to supplemental opposition filed in June 2008, as well as her opening brief on appeal, is clear that the requested sum was about \$1.5 million (\$1,513,513.50 to be exact). The discrepancy, in any event, is not material to this appeal.

³ The pre-opposition fee request listed 1,755.75 hours and the post-opposition requested an additional 146.4 hours: The total is about one year's time for an attorney devoting all his or her time to the case. We should note here, as Magana's opening brief stresses, that the bulk of the 1900 or so hours, about 86 percent, was spent by three of the seven attorneys.

As the trial court itself looked at it, it was discretionary reduction based on the legal and factual simplicity of the case, a small number of depositions, unnecessary work and some significant overstaffing. We now directly quote all substantive thoughts from the minute order explaining the \$445,000 award:

- (1) the “attorney fees requested by plaintiff” were “not reasonable”;
- (2) there were “no complex issues or other factors that would justify a multiplier”;
- (3) “None of plaintiff’s claims required specialized legal research”;
- (4) “only four depositions were conducted”;
- (5) “no experts were utilized”;
- (6) “Plaintiff’s counsel elected to include seven different attorneys,” resulting in “duplication/overlap of effort”; and
- (7) “it was unnecessary to have three attorneys for trial,” particularly since “Mr. Blanco was an experienced, capable trial lawyer and Ms. Habib, while less experienced, proved to be very able to assist Mr. Blanco in the prosecution of the matter.”

Magana now timely appeals from the \$445,000 award as too low. Her central argument is that it was an abuse of discretion to award only that amount.

II. *The Attorney Fee Request*

A. Entitled to a Positive Multiplier? No

Most of Magana’s briefing is a riff⁴ based on one Court of Appeal opinion arising in Fresno, *Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359 (*Horsford*). Magana reads *Horsford* as entitling her to much more than she got by way of attorney fees, and specifically for the proposition that winning counsel in a civil rights case is *automatically entitled* to a multiplier greater than one. In *Horsford*, three plaintiffs won a race discrimination case against a campus police department, counsel for the plaintiffs asked for \$3.3 million in fees, the trial court

⁴ A musicological term for a repeated chord progression.

awarded \$1.2 million, and the appellate court reversed the award as too low and remanded for further proceedings to increase it.

We first note that *Horsford* is readily distinguishable on its facts.

Horsford, coming out of litigation in Fresno and involving law enforcement defendants, implicated the problem of disparate billing rates among various regions in California. Apparently, as a subsequent Fifth District case, *Nichols v. Taft* (2007) 155 Cal.App.4th 1233, would note, counsel in Fresno -- at least back in 2005 -- might blush to charge as much as \$250 an hour, while out-of-town lawyers from San Francisco would charge as much as \$550 an hour. (*Id.* at pp. 1237-1238.)

The geographical disparity in billing rates posed the question to the trial court in *Horsford* of what precisely is the reasonable rate for the lodestar: high priced out-of-town rates or local rates? The successful plaintiffs had, after all, been represented by a San Francisco firm who requested fees based on San Francisco rates. The trial court erred, held the appellate court, in “disregard[ing] the record” that plaintiffs’ attempt to find local counsel was “wholly unsuccessful.” (*Horsford, supra*, 132 Cal.App.4th at pp. 397-398.) So the trial court began with the wrong lodestar, based as it was on local rates. (See *id.* at pp. 397-399.)

The fee disparity error, according to *Horsford*, was compounded by, in one instance “disregarding the time records *completely*,” and by, more generally, in “failing to use “counsels’ time records as the starting point for its lodestar determination.” (*Horsford, supra*, 132 Cal.App.4th at p. 397, italics added.)

In the case before us, there is, of course, no issue of geographical disparity in “community” rates, or, more precisely as in *Horsford*, the factual issue of any need of the plaintiff to seek out-of-county lawyers who might command higher-than-community rates because the defendant would be too intimidating to local lawyers. (See *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132 [“the lodestar is the basic fee for comparable legal services in the community”].)

Nor is there any indication at all that the trial judge here disregarded the time records -- completely or otherwise. At oral argument, in fact, he showed a

remarkable familiarity with them. He just evaluated them in light of the nature of the case.

However, to the degree that *Horsford* even arguably requires a positive multiplier, the case has been specifically repudiated by the very court that issued the opinion, the Fifth District (albeit not the same panel), in *Nichols v. City of Taft, supra*, 155 Cal.App.4th 1233 (*Nichols*). In *Nichols*, the appellate court agreed with the defendant's contention that the trial court, "mistakenly presupposed it was *required* to apply a fee multiplier in this case." (*Id.* at p.1236, italics in original.) In fact, as explained in the opinion, the trial court's mistake was based "on its reading of the *Horsford* case" on the multiplier question. (*Id.* at p. 1238).

Much of the *Nichols* opinion is devoted to explaining (a) *Horsford*, properly read, recognized that "a trial court's decision whether to apply a multiplier is a discretionary one" (*Nichols, supra*, 155 Cal.App.4th at p. 1241), but (b) "[I]n any event" the proper rule is to be derived from the Supreme Court in its *Ketchum* decision, namely that "'a trial court is not *required* to include a fee enhancement to the basic lodestar figure for contingent risk, exceptional skill, or other factors, although it retains discretion to do so in the appropriate case.'" (*Ibid.*, quoting *Ketchum, supra*, 24 Cal.4th at p.1138, italics in original.) The hint, of course, is that *Horsford* might have gotten a little bit sideways of the Supreme Court's *Ketchum* opinion on the multiplier issue, at least as *Horsford* was arguably misread by the trial judge in *Nichols*. A multiplier greater than one, is not, as Magana's counsel now asserts, "the norm," deviation from which is only justified by "extraordinary circumstances."

Now we turn directly to the multiplier issue as it comes to us in the case before us. We first pause to note that, quite independent of *Horsford*, there is nothing about multipliers that requires them to be greater than one. *Serrano v. Priest* (1977) 20 Cal.3d 25, 49, specifically contemplated, in the process of rejecting the contention that the fees awarded a public interest law group were inadequate, that some of the traditional factors bearing on the multiplier militated "in favor of diminution" of the lodestar. Indeed, appellate courts have upheld applications of multipliers as low as .20, .15, and

.35. (See *San Diego Police Officers Assn. v. San Diego Police Department* (1999) 76 Cal.App.4th 19, 24 [affirming fee award based on .20 multiplier]; *Meister v. Regents of University of California* (1998) 67 Cal.App.4th 437, 444-445, 455-456 [affirming a fee award of about \$75,000 as against a lodestar of more than \$500,000, which works out to a multiplier of less than .15]; *Californians for Responsible Toxics Management v. Kizer* (1989) 211 Cal.App.3d 961, 975 [“We cannot say that a 35 percent fractional multiplier is arbitrary or bears ‘no reasonable connection between the lodestar figure and the fee ultimately awarded.’”].)

And in fact, at oral argument in the trial court, Magana’s counsel would have been quite happy to have accepted a .90 multiplier.⁵

B. And Tested by An Abuse of Discretion Standard

The present case, then, devolves into whether the trial court’s de facto application of a .55 multiplier (or, looked at alternatively, application of a multiplier of one to a lodestar adjusted downward by about 44 percent) was an abuse of discretion. An aspect of the abuse of discretion standard is, of course, that the trial judge’s decision might not be the same decision as the one favored by the appellate court, it need only be within the bounds of reason. (See *IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 69 [“A trial court will be found to have abused its discretion only when it has ““exceeded the bounds of reason or contravened the uncontradicted evidence.”””]; see also *Harman v. City and County of San Francisco* (2007) 158 Cal.App.4th 407, 427 [“Although if the decision had been presented to us in the first instance we may not have awarded attorney fees that so far exceed the recovery of damages, neither do we find it an abuse of discretion.”].)

⁵ In commenting on *Moreno v. City of Sacramento* (9th Cir. 2008) 534 F.3d 1106, Magana’s counsel said: “Okay, basically the opinion states that the court certainly has wide discretion on these issues and that if the court was to take a 10 percent haircut, the way they termed it, the Court of Appeal isn’t going to second guess your judgment on that point because you were here.” A few moments later counsel commented, after asserting that the trial judge should go “line by line” through the “billing statement,” was that the judge could “get out of that position” (i.e., giving a line-by-line evaluation of the time statements), by administering “a 10 percent haircut and then we’ll call it a day.”

The trial judge’s response: “Nice try, Mr. Matern.”

We need only add these thoughts about the abuse of discretion standard: It is perhaps most suitable in attorney fee cases because the trial judge is in the best position to evaluate the case that was actually presented in front of him or her. (See *Ketchum*, *supra*, 24 Cal.4th at p.1132 [““The experienced trial judge is the best judge of the value of professional services rendered in his court, and while his judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong.””]; *PLCM Group v. Drexler* (2000) 22 Cal.4th 1084, 1096 [““The value of legal services performed in a case is a matter in which the trial court has its own expertise.””]; *Wysinger v. Automobile Club of Southern California* (2007) 157 Cal.App.4th 413, 430 [“The amount of fees is within the sound discretion of the trial court and the trial judge is in the best position to evaluate the quality of legal services at trial.”].)

Thus, in *Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, this court specifically noted that the trial court’s determination of the award amount “““will not be disturbed unless the appellate court is convinced that it is clearly wrong.””” (Id. at p.1322, quoting *Ketchum v. Moses* (2001) 24 Cal.4th at p. 1132. (*Ketchum*)). Further, the trial court’s judgment is ““presumed correct; all intendments and presumptions are indulged to support the judgment; conflicts in the declarations must be resolved in favor of the prevailing party, and the trial court’s resolution of any factual disputes arising from the evidence is conclusive.”” (Id. at p. 1322, quoting *In re Marriage of Zimmerman* (1993) 16 Cal.App.4th 556, 561-562.)

C. The Merits of the Exercise of Discretion

So, the \$445,000 question is: Was the fee award reasonable? As this court noted in *Christian Research Institute*, the prevailing party seeking to recover her fees and costs under the California Civil Rights statutes “““bear[s] the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates.””” (*Christian Research Institute, supra*, 165 Cal.App.4th at p.1320, quoting *ComputerXpress, Inc. v. Jackson* (2001) 93 Cal.App.4th 993, 1020.) The fee award

“should ordinarily include compensation for *all* the hours *reasonably spent*.” (*Ketchum, supra*, 24 Cal.4th at p.1133.) (Italics in original.)

It is true that in a contingency case, the trial court may increase the lodestar figure to provide a fee enhancement reflecting the risk that the attorney may not receive any payment *at all* absent prevailing in the suit. Thus in *Ketchum, supra*, 24 Cal.4th at pages 1132-1133, the high court quoted Posner’s Economic Analysis of Law (4th ed. 1992) on the point of its analogy between (1) fee enhancements in contingency cases and (2) higher interest rates charged by bankers when the risk of default is greater.

On the other hand, a fee request that is unreasonably inflated is *itself* grounds to reduce the award or deny one altogether. (*Serrano v. Unruh* (1982) 32 Cal.3d 621, 635.) Moreover, reasonable compensation does not include compensation for “padding’ in the form of inefficient or duplicative efforts. . . .” (*Ketchum, supra*, 24 Cal.4th at pp. 1131-1132; see also *Chavez v. City of Los Angeles* (2010) 47 Cal.4th 970, 991 [speaking of the “amount of time an attorney might reasonably expect to spend in litigating such a claim”].) As the court said in *Gorman v. Tassajara Development Corp.* (2009) 178 Cal.App.4th 44, 101: “A *reduced award might be fully justified by a general observation that an attorney overlitigated a case or submitted a padded bill* or that the opposing party has stated valid objections.” (Italics added.) Indeed, exactly that happened in the recent case of *Chavez, supra*, 47 Cal.4th 970, albeit in a context where the plaintiff’s success was unquestionably not as good as here. The California Supreme Court made it clear that, when considered in light of the amount of success obtained, a “grossly inflated” request “alone” is “sufficient” to support the denial of all fees.⁶ (*Id.* at p. 991.)

⁶ What success there was in *Chavez* was by no means as large as that of Magana’s counsel’s here -- \$11,500 there versus at least \$111,000 here. (See *Chavez, supra*, 47 Cal.4th at 991 [“Here, the trial court reasonably could and presumably did conclude that plaintiff’s attorney fee request in the amount of \$870,935.50 for 1,851.43 attorney hours was grossly inflated when considered in light of the single claim on which plaintiff succeeded, the amount of damages awarded on that claim, and the amount of time an attorney might reasonably expect to spend in litigating such a claim. This fact alone was sufficient, in the trial court’s discretion, to justify denying attorney fees altogether.”].)

Closer to home, this court recently reversed a large attorney fee award against a trust based on the work of eight attorneys from three major law firms, noting “‘However, just as there can be too many cooks in the kitchen, there can too many lawyers on a case.’” (*Donahue v. Donahue* (2010) 182 Cal.App.4th 259, 272, quoting *Guckenberger v. Boston Univ.* (D.Mass. 1998) 8 F.Supp.2d 91, 101.) [2010 WL 627295 at p. 7].) The *Donahue* court noted that signs of too many lawyers in the kitchen included “task padding, over-conferencing, [and] attorney stacking (multiple attendance by attorneys at the same court).” (*Id.* at 222.) Concomitantly, if the trial court orders attorney fees or costs substantially less than requested by the moving party, we may infer that the court determined the request as inflated or unreasonable. (*Christian Research Institute, supra*, 165 Cal.App.4th at p.1325.) If “the trial court severely curtails the number of compensable hours in a fee award, we presume the court concluded the fee request was padded.” (*Ibid.*)

In the case before us, fee padding was precisely what this trial judge concluded. At oral argument on the hearing, the trial judge pointed to several factors in elaboration of his tentative opinion, embodied in the minute order quoted above:

(1) He clearly thought there was task padding: He noted that there were attorneys who worked on the opening statement who didn’t give the opening statement. And he further noted that there were attorneys who worked on jury voir dire who did not actually do the voir dire.

(2) He found attorney stacking: Magana was represented by three attorneys at trial when two would have easily sufficed.

(3) And he found over-conferencing: “I saw lots of conferencing and going over things together, and that’s a natural result of having a lot of individuals on the case.”

Nor did the trial judge think the case was complex, a point that seems reasonable from our own experience with the case. This was a classic “he said she said” case, in a context where there was abundant evidence of sexual harassment: As we pointed out in *Magana I*, Puelma’s “tendencies” were already known by fellow

supervisor Jack Sarkissian, who, having no power to change them, could only “walk away” when Magana complained about them to him. (*Magana, supra* [2009 WL 1878712 at p. 3].) This was not a case where the evidence of harassment was thin, where reasonable judicial minds or jurors might differ, and therefore detailed legal research was required. Indeed, the big legal defense presented by Charlie’s, and as presented to us in *Magana I*, was the downright dubious theory that Magana could be classified as *not* an employee and not as an independent contractor, but as a “customer.” That was, to be charitable, wishful thinking. We had no problem disposing of that contention in *Magana I*.

Finally, there is the matter of what we might call “effective per hour compensation.” We acknowledge at the outset, this can be a touchy subject. Law is a profession of egos. “Scorpions in a bottle” was a phrase used to describe nine men with a traditional judicial temperament working in a great think tank in Washington -- how much more does the phrase apply to trial lawyers who are accustomed to the mortal engines of trial procedure, the rude throats of opposing counsel, and the pride, pomp and circumstance of glorious litigation. So assigning a “per hour” to an attorney’s services is necessarily touchy business: If so-and-so charges X, the average attorney usually thinks that he or she is worth X plus a whole lot more.

Effective per hour compensation, however, is simply the flip side of the default premium to which our Supreme Court alluded in *Ketchum* when it cited Posner’s analogy to banks and interest rates. That is: One way you can test whether a given multiplier is *reasonable* is to look at the effective rate of per hour compensation now reduced to having the legal effect of a court judgment.⁷

Here, the effective rate of per hour compensation is \$234 for every hour spent by every attorney on the case. We may take as a given that all of Magana’s attorneys who worked on the case consider themselves worth much more than \$234 an hour, but the fact remains that, outside of the legal world, \$234 an hour is a pretty good

⁷ Presumably, if a good trial attorney is worried about the prospect of the defendant filing for bankruptcy before the judgment or attorney fee award can be collected, the trial attorney will take that prospect into account in considering any settlement offers.

sum: It works out to about \$400,000 a year, even assuming that an attorney bills a close-to-sane 1700 hours a year. (At an insane 1900 billed hours at year, the figure works out to almost \$450,000 a year.) Even allowing 50 percent for overhead, \$400,000 a year is, for most people, even attorneys, real money.

The amount awarded, then, certainly was within the bounds of reason.

III. *The Statement of Decision Issue*

As shown at oral argument before the trial court, Magana's counsel believes that they are entitled to a "line-by-line" evaluation of their billing sheets.⁸ That theory is inconsistent with what the *California* Court of Appeal said in *Gorman v. Tassajara Development Corp.*, *supra*, 178 Cal.App.4th at page 101: "When confronted with hundreds of pages of legal bills, trial courts are not required to identify each charge they find to be reasonable or unreasonable, necessary or unnecessary."

Imposing a burden on the trial judge to articulate, line by line, why a fee request is too high is also inconsistent with the whole edifice of the abuse of discretion standard. Such a requirement converts a process that must necessarily entail the evaluation of the "gestalt" of a case into a seemingly endless series of binary scrimmages to the general obfuscation of the big picture.

There is also a positive danger in requiring a line-by-line approach: Things seem more reasonable in tiny digestible bits that obscure their cumulative effect; the trial judge may miss the reverse synergy inherent in chopped up bits of task padding, attorney stacking, and over-conferencing.

Thus, even if the trial court had been obligated to issue a statement of decision, it would have been under no compulsion to do the sort of endless "okay, I'll give you that 15 minute conference on the *Smerdley* issue, but I think you took too long in finalizing the continuance stipulation" that Magana's counsel appear to have expected of the trial judge. (See also *Higson v. Montgomery Ward & Co.* (1968) 263 Cal.App.2d

⁸ Magana's attorney Matthew Matern, after introducing the *Moreno* case, told the judge: "I realize that going through a billing statement line by line is a fairly tedious task for anybody involved, and --" To which the trial judge shot back "Not *fairly* tedious. That *is* a tedious task." (Obvious verbal emphasis in record.)

333, 344 [“Where the findings made by the court dispose of an issue, requested specific findings relating to the same issue need not be made].)

The trial court here was not obligated to issue a statement of decision. (See generally *Christian Research Institute, supra*, 165 Cal.App.4th at p. 1323 [the “court is not required to issue a statement of decision”]; *In Re Marriage of Askmo* (2000) 85 Cal.App.4th 1032, 1040 [statement of decision statute does not require a statement of decision for orders on a motion].) A fortiori it had no burden to articulate, line by line, what charges it thought were out of line.

IV. *The Motion for Reconsideration Issue*

The motion for reconsideration was based on the Ninth Circuit’s *Moreno* case. *Moreno* was not, however, “new law” at the time of the original attorney fee hearing August 8, 2008. In fact, *Moreno* was brought to the trial court’s attention by Magana’s counsel on August 8 and formed the centerpiece of counsel’s argument.

Just a few additional comments on *Moreno* are in order: The case is based on a federal law governing section 1983 actions, and is, essentially, a *procedural* case focused on the quanta of explanation a federal district judge must give when cutting a fee award in a successful federal civil rights action. Hence, there is not much to be found in the opinion about the underlying case, which apparently had something to do -- the opinion isn’t much more specific than that -- with the seizure and destruction of the plaintiff’s property by a local government. (See *Moreno, supra*, 534 F.3d at p. 1110.)

The big innovation made by the *Moreno* opinion -- for the Ninth Circuit at least -- came when the court imported a First Circuit rule creating an *expectation* of a “specific articulation” of the “court’s reasoning” when there is a large “disparity” between the lawyer’s request and the ultimate award: “Where the difference between the lawyer’s request and the court’s award is relatively small, a somewhat cursory explanation will suffice. But where the disparity is larger, a more specific articulation of the court’s reasoning is expected.” (*Moreno, supra*, 534 F.3d at p. 1111, citing *Bogan v. City of Boston* (1st Cir. 2007) 489 F.3d 417, 430.)

We do not read *Moreno* to require a line-by-line analysis of an attorney fee request even of federal district courts, much less state trial courts. “Specific articulation” does not mean “line by line.” Of course, the case does arguably fasten on federal district courts in the Ninth Circuit a significant obligation of explanation for fee reductions in federal civil rights cases.

Whether, in the present case, *this* trial court’s minute order and remarks at oral argument still might pass muster under the new Ninth Circuit *Moreno* standard is a matter we need not tackle. California trial judges might indeed do well, of course, to heed -- to use the Ninth Circuit’s own self-descriptive phrase -- the wisdom of the oracle at Pasadelphi.⁹ Bacon said writing makes an exact man, and a trial judge’s well-thought-out analysis of why he or she thinks a fee request to be too high can never harm the quality of that judge’s decision-making.

Such exertions are, however, beyond what is *required* of California trial judges, who are not even required to prepare statements of decision in response to attorney fee motions. Under California law, as long as an award can be “rationalized” under an abuse of discretion standard, it must be upheld. (See *Donahue, supra*, 182 Cal.App.4th at p. 269, quoting *Gorman, supra*, 178 Cal.App.4th at p. 101 [“‘A trial court’s award of attorney fees must be able to be rationalized to be affirmed on appeal.’”].) Here, the trial judge gave a perfectly reasonable explanation of the reason he reduced the fees in this case, and easily one that allows this fee award to be “rationalized.”

⁹ See *Miller v. Gammie* (2003) 335 F.3d 889, 901, footnote 1 [legal theory of precedent was “now so riddled with lesions and encrustations we can never be quite sure which portions of our case law are holdings and which dicta, unless and until the Oracle at Pasadelphi tells us”].

V. Disposition

The attorney fee order is affirmed. Respondent is to recover its costs on appeal.

SILLS, P. J.

WE CONCUR:

BEDSWORTH, J.

ARONSON, J.